

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2019

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THE HON'BLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No.11542 of 2019
and
W.M.P.No.11800 of 2019

T.Paramasivam ...Petitioner
Vs

1.The Management,
The Metropolitan Transport Corporation,
Rep.by its Senior Deputy Manager,
Pallavan Salai, Chennai - 600 002.

2.The Dean,
Regional Medical Board,
Rajiv Gandhi Government General Hospital,
Chennai - 600 003. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Declaration, declaring the act of the first respondent in Lr.No.25072/PS (A) 4/MTC/2014 dated 19.02.2019 directing the petitioner to appear before the Medical Board as illegal and Ultravires and consequently direct the first respondent to continuously provide the light duty work which was already given to the petitioner for the past 15 years such as in money collection section or in ticket issue section or as security Guard in the Office or any alternative light duty with pay protection as per Section 47 of the persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 based on the disability certificate given more than SEVEN TIMES by the Medical Board to the Petitioner till his superannuation.

For Petitioner	:Mr.R.Y.George Williams
For Respondents	:Mr.Sai Prasad for R1
	Mr.R.S.Selvam,
	Govt.Advocate for R2

O R D E R

The Writ Petition was listed for hearing on 24.04.2019. None appeared for the Petitioner. Thus, the case was directed to be listed on 25.04.2019 under the caption "For Dismissal".

2. Again when the matter is taken up for hearing on 26.04.2019, there is no representation on behalf of the Petitioner. Thus, it is to be construed that the petitioner is not interested in pursuing the matter.

3. Accordingly, the Writ Petition stands dismissed for nonprosecution. No costs. Consequently, connected miscellaneous petition is closed.

For Being mentioned

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The Writ Petition having been posted on 05.08.2019 under the caption "For being Mentioned" in pursuance of the order dated 26.04.2019 made herein and in the presence of Mr.R.Y.George Williams, Learned Counsel for the Petitioner, Mr.Sai Prasad Learned Counsel for the first Respondent and Mr.R.S.Selvam, Government Advocate for the second respondent this Court made the following order:-

S.M.SUBRAMANIAM, J.

The writ petition is listed today (i.e. 05.08.2019) under the caption "for being mentioned", on account of the fact that the order passed by the Court was mistakenly transcribed by the Personal Assistant, which was noticed only after despatching of the order. Thus, the case was directed to be listed today. On verification, it is found that at the time of transcribing the order dictated by the Court, some errors were occurred. Accordingly, the order dated 26.04.2019 despatched on 10.07.2019 in the present writ petition is hereby recalled and the following orders are passed:

The order dated 19.02.2019, directing the writ petitioner to submit the original Medical Reports and appear for Medical Examination before the Government Medical Board is under challenge in the present writ petition.

2. The impugned order dated 19.02.2019, states that the respondents referred the writ petitioner to the Medical Board to find his suitability, as per the Medical Report.

3. In order to declare an employee medically unfit to perform his duties and responsibilities, Medical Examination by a

competent Medical Board is the precondition. Merely based on the application submitted by an employee, the authorities competent cannot provide alternative employment to him. In all such cases, where the medical reports are submitted by the employees, the authorities competent must refer the case to the competent Medical Board for Medical Examination and for the purpose of submitting a report. The competent Medical Board has to ascertain the genuinity or otherwise of the ailments cited by the employee in his application and take a decision and submit a report. The Medical Report submitted by the employees cannot be taken into consideration for the purpose of grant of alternative employment. Thus, it is a precondition that the Medical Certificate of the competent Government Medical Board is necessary for providing alternative employment to the employee concerned with reference to Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

4. Transport Corporation created a committee for the purpose of scrutinizing the applications. A committee consists of the General Manager, Assistant Legal Manager, Assistant Manager (Personnel), as well as the Medical Officer.

5. This being the Competent Committee, to scrutinize the applications submitted by the employees seeking alternate employment, this Court is of the considered opinion that the facts and circumstances as well as the Medical Reports are to be scrutinized by the Committee with the help of the Medical Officer, who is also a member of the committee and arrive at a conclusion and take a decision by following the procedures contemplated. The complex facts and circumstances raised by the employees regarding their ailments can never be adjudicated in a writ proceedings under Article 226 of the Constitution of India.

6. The Court, not being a Medical Expert, cannot offer any opinion, in respect of the Medical Reports placed before this Court. The Government Medical Board is the authority and the respondents have rightly referred the case of the writ petitioner for

examination before the Government Medical Board. On receipt of the report from the Government Medical Board, the Committee submitted by the Transport Corporation is bound to consider all the materials available on record and thereafter, take a decision and pass orders. Even in such cases, the period of alternate employment is also to be mentioned by the Competent Authorities. It is not as if, once the alternate employment is provided, that need not be continued till the date of retirement. Periodical assessment of the employees are also of paramount importance in the interest of public administration, as the service of the transport corporation is vital as far as the public services are concerned.

7. Under these circumstances, the employees concerned must be scrutinized and the Medical Reports are to be reviewed periodically by sending these employees before the Competent Medical Board. In the event of not reviewing such cases, it will be difficult for the Corporation to run the administration smoothly and efficiently. If large number of employees are provided with an alternate employment, then it would be difficult for the Transport Corporation to run buses for the public convenience. These all are the issues to be considered by the Competent Authorities.

8. Thus, mere submission of an application by the writ petitioner is insufficient to pass an order of direction directing the authorities concerned to provide alternative employment to him. In the present case on hand, the respondents have already referred the case of the writ petitioner to the competent Medical Board for Medical Examination and therefore, the writ petitioner is bound to appear before the Government Medical Board concerned. Only in the event of submitting a report by the competent Medical Board, the case of the writ petitioner can be considered and not otherwise. If the writ petitioner is declared fit for duty, then he is bound to perform his duties and responsibilities as assigned by the authorities competent. Even thereafter, if the writ petitioner is not satisfied, then it is his at liberty to take a decision in respect of his continuance in the employment

or exercise his option of voluntary retirement and resignation or otherwise.

9. With these observations, the present writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (insp cell)

//True Copy//

Sub Assistant Registrar

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To

1. The Senior Deputy Manager, Management,
The Metropolitan Transport Corporation,
Pallavan Salai, Chennai - 600 002.
2. The Dean,
Regional Medical Board,
Rajiv Gandhi Government General Hospital,
Chennai - 600 003.

+1cc to M/s. Sairaj Associates SR.No. 66993
+1 cc to Government Pleader Sr.No. 67130

W.P.No.11542 of 2019

A.SK(14/08/2019)